

FCC MAIL SECTION
Before the
Federal Communications Commission
Washington, D.C. 20554
AUG 17 8 04 AM '94

MM Docket No. 94-136
DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),	RM-8161
Table of Allotments,	RM-8309
FM Broadcast Stations.	RM-8310
(Clewiston, Fort Myers Villas.)	
Indiantown, Jupiter, Key Colony	
Beach, Key Largo, Marathon, and	
Naples, Florida) ¹	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 9, 1994;

Released: August 16, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Spanish Broadcasting System of Florida, Inc. ("SBSF"), licensee of Station WZMQ(FM), Channel 280C2, Key Largo, Florida, the Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 8 FCC Rcd 3886 (1993), proposing the substitution of Channel 292C2 for Channel 280C2 at Key Largo, and the modification of its license to specify operation on Channel 292C2. In order to accommodate the substitution of Channel 292C2 for Channel 280C2 at Key Largo, petitioner also requested the substitution of Channel 280C2 for Channel 288C2 at Key Colony Beach, Florida, and the modification of Station WKKB(FM)'s construction permit to specify operation on Channel 280C2; and the substitution of Channel 288A for Channel 292A at Marathon, Florida, and the modification of Station WAVK(FM)'s license to specify operation on Channel 288A.

2. In response to the *Notice*, comments were filed by SBSF, Florida Keys Electric Cooperative Association, Inc. ("FKEC") and Mary Kay Reich ("Reich"). Counterproposals were filed by Key Chain, Inc. ("Key Chain") (RM-8309); Okeechobee Broadcasters, Inc. ("OBI"), Sunshine Broadcasting, Inc. ("Sunshine")² and Jupiter Broadcasting Corporation ("JBC") ("Joint Petitioners") (RM-8310)³ and Naples Broadcasting Corporation ("NBC"), licensee of Station WGUF(FM), Marco, Florida.⁴ In response to the counterproposals, reply comments were filed by SBSF, Sterling Communications Corp., licensee of Station WSGL(FM), Naples, Florida ("Sterling"), Vero Beach FM Radio Partnership ("Vero Beach"), SBSF and joint petitioners.⁵

3. We issued *Orders to Show Cause* ("Order"), ordering Richard L. Silva, ("Silva"), permittee of Station WKKB(FM), Channel 280C2, Key Colony Beach, Florida, and Key Chain, licensee of Station WAVK(FM), Channel 292A, Marathon, Florida, to show cause why their respective channels should not be modified. In response to the *Order*, Silva filed no response and Key Chain filed a counterproposal. Accordingly, pursuant to Section 1.87 of the Commission's Rules, Silva is deemed to have consented to the proposed exchange of channels.

4. In their counterproposal, Joint Petitioners request the substitution of Channel 276C1 for Channel 276C2 at Indiantown, Florida, and the modification of Station WOKC-FM to specify operation on Channel 276C1; substitution of Channel 292C3 for Channel 276C3 at Naples, Florida, and the modification of Station WSGL(FM)'s license to specify operation on Channel 292C3; substitution of Channel 275C2 for Channel 292A at Fort Myers Villas, Florida, and the modification of Station WSUV(FM)'s license to specify operation on Channel 275C2; substitution of Channel 258A for Channel 292A at Clewiston, Florida, and the modification of Station WAFC-FM's license to specify operation on Channel 258A; and the substitution of Channel 292C3 for Channel 258A at Jupiter, Florida, and the modification of Station WADY(FM)'s construction permit to specify operation on Channel 292C3. Three of the five affected stations are proponents of this counterproposal and Glades Media Company ("Glades"), licensee of Station WAFC-FM, Clewiston, Florida, a fourth station has provided its signed consent to the change. Joint petitioners stated their intentions to reimburse Glades for its reasonable expenses involved in changing frequencies and transmitter location. However, Joint Petitioners failed to make a reimbursement commitment in the counterproposal to Sterling Communications Corp., licensee of Station

¹ The communities of Clewiston, Fort Myers Villas, Indiantown, Jupiter and Naples have been added to the caption.

² On April 22, 1994, an assignment of license from Sunshine Broadcasting, Inc. to WSUV, Inc., was consummated for Station WSUV(FM), Channel 292A, Fort Myers Villas, Florida (BALH-930903G1). In addition the call sign was changed from WSUV to WROC. On June 1, 1994, an assignment of license from Okeechobee Broadcasters, Inc., to Amaturro Group, Ltd., was consummated for Station WOKC(FM), Channel 276C2, Indiantown, Florida (BALH-930907G1).

³ Public Notice of the counterproposals was given on August 6, 1993, Report No. 1958.

⁴ NBC withdrew its counterproposal on July 28, 1993, because its engineering information had been erroneously prepared. In accordance with Section 1.420(j) of the Commission's Rules, NBC states that it will not receive compensation or any other consideration for the withdrawal of its counterproposal.

⁵ After the close of the comment period, Joint Petitioners filed

a motion for leave to file out of cycle pleading and supplemental joint comments. SBSF filed a motion for extension of time, an opposition to motion for leave to file out of cycle pleading, and contingent opposition to supplemental joint comments and erratum. Gulf Communications Partnership ("Gulf") filed a motion for leave to file comments and comments. Joint Petitioners and WSUV, Inc. ("WSUV"), successor-in-interest to Sunshine filed a request for additional time to file comments, joint opposition to motion for leave to file comments and a joint reply to opposition. Gulf filed a response to joint petitioners opposition. WSUV filed a notice of continued interest and intent to participate. Amaturro Group, Ltd. ("Amaturro"), successor-in-interest to OBI filed a notice of continued interest and intent to participate. Commission Rule 1.415(d) precludes the filing of comments after the close of reply comment period. In addition, Joint Petitioners counterproposal is procedurally defective due to failure to state a willingness to reimburse the licensee of Station WSGL(FM), Naples Florida. See para. 4.

WSGL(FM), Naples, Florida, who must change channels, and is entitled to reimbursement for the reasonable costs in changing frequencies. See *Lonoke, Arkansas and Clarksdale, Mississippi*, 6 FCC Rcd 4861 (1991), *York, Alabama*, 4 FCC Rcd 6923 (1989), and *Circleville, Ohio*, 8 FCC 2d 159 (1967). Joint Petitioner's counterproposal fails to comply with the Commission's Rule that counterproposals must be technically and procedurally correct at the time of their filing. Therefore, we will dismiss their counterproposal. See *Fort Bragg, California*, 6 FCC Rcd 5817 (1991) and *Report and Order, Broken Arrow and Bixley, Oklahoma and Coffeerville, Kansas*, 3 FCC Rcd 6507 (1988), *recon. denied*, 4 FCC Rcd 6981 (1989). All comments filed in response to joint petitioner's counterproposal are moot.

5. FKEC in its comments states that a serious interference problem exists between Station WZMQ(FM), Channel 280C2, Key Largo, Florida and Station WKLG(FM), Channel 271C2, Rock Harbor, Florida, which are located at a site approximately 19 kilometers (11.8 miles) northeast of Station WCTH(FM), Channel 262C1, Plantation Key, Florida. FKEC contends that there is an intermodulation interference problem which completely blanks out the WCTH signal for a large portion of Key Largo. FKEC submits that it utilizes a subcarrier of Station WCTH for load control, and WCTH with its ERP of 100,000 watts, 500 feet tower, and central location is uniquely positioned to provide effective load control ability. FKEC states that without effective load control, its ability to furnish an uninterrupted supply of electricity to the Keys during peak loads is adversely affected. The interference to WCTH has a significant detrimental effect on its system. FKEC urges adoption of this proposal to change frequencies in order to resolve this interference problem.

6. SBSF in its comments reiterates its support for the changes proposed in the *Notice*. In response to the Commission's request for evidence of the alleged "receiver induced third order intermodulation interference ("RITOI")" to Station WCTH, Plantation Key, Florida. SBSF submitted statements from Charles Dreher, Technical Consultant to SBSF, Station WZMQ(FM) and E.W. Bie, Technical Director of Station WCTH(FM). SBSF contends that based on Mr. Dreher's statement that he conducted informal reception tests in the Key Largo area using a variety of FM receivers, confirms the existence of the intermodulation. SBSF alleges that the intermodulation occurs as a result of nonlinear mixing of signals in the FM receivers within a mile of the co-location transmitting antenna for Stations WZMQ(FM) and WKLG(FM), which causes interference to Station WCTH(FM). According to SBSF repositioning the receiver or adjusting antennas does not solve the problem. SBSF also requested Mr. Michael Nicolay, an engineer from the Carl T. Jones, Corporation to conduct some engineering tests, using a Hewlett Packard HP8568 spectrum analyzer, an HP8447D preamplifier, and an HP7475A plotter, measured the occupied bandwidth, spurious emission and harmonic output of both WKLG and WZMQ. These test confirmed the existence of RITOI. The test also determined that the interference to Station WCTH was not generated directly by either WZMQ(FM) or WKLG(FM). In test where each station separately cut its RF carrier, the spectrum analyzer showed no interference. After confirming that the outputs of both stations complied in all respects with Section 73.317 of the Rules regarding out-of-band emissions, Mr. Nicolay proceeded to further investigate the cause of the RITOI. When the carrier of only WZMQ was cut, the interference disappeared. When

the carrier of WKLG was cut, the interference also disappeared. Accordingly, SBSF states that the interference to WCTH reception is strictly a matter of RITOI occasioned solely by the frequency assignments and co-location of WKLG's and WZMQ's transmitters. SBSF states that a change of frequency as proposed will eliminate the interference. Mr. Dreher also states that the Florida Keys electric power co-op, which provides electricity to all of the Florida Keys, uses WCTH's subcarrier for power load management purposes to control loads during times of peak demand to prevent brown-outs or black outs. Due to the RITOI, they cannot control receiver-equipped loads in the Key Largo area which is affected. In addition, the Florida Association of Broadcasters had originally envisioned Station WCTH as the primary station for the new emergency broadcasting system for Monroe County. However, due to the RITOI in Key Largo which prevents proper reception of WCTH's signal, another station WFKZ(FM) was designated in its place. Mr. Bie also states he has received numerous complaints from listeners, using both automobile, portable and non portable radios, that they are unable to receive WCTH's signal in the Key Largo area. He contends that the interference also disappears when either WKLG(FM) or WZMQ(FM) is off the air. Reich restates SBSF concerns.

7. In response to the *Order to Show Cause Key Chain* filed a counterproposal requesting the substitution of Channel 288C2 for Channel 292A at Marathon, Florida. Key Chain contends that the increased facilities will permit Key Chain to provide an enhanced level of service to the widely-dispersed chain of islands making up the Florida Keys. This proposal is mutually exclusive with the proposed substitution of Channel 288A for Channel 292A at Marathon, Florida. The substitution of Channel 288C2 at Marathon can be made without affecting the other changes proposed in the *Notice*. Key Chain states its intent to apply for Channel 288C2, if allotted. No other expressions of interest were received for Channel 288C2 at Marathon.

8. After consideration of the information filed in this proceeding, we believe the public interest would be served by the substitution of Channel 280C2 for Channel 288C2 at Key Colony Beach, Florida, the substitution of Channel 292C2 for Channel 280C2 at Key Largo, Florida, and the substitution of Channel 288C2 for Channel 292A at Marathon, Florida. In accordance with Section 1.420(g) of the Commission's Rules, we will modify the license of Station WZMQ(FM) at Key Largo, Florida to specify operation on Channel 292C2; we will modify the construction permit for Station WKKB(FM) at Key Colony Beach, Florida, to specify operation on Channel 280C2, and we will also modify the license for Station WAVK(FM) at Marathon, Florida, to specify operation on Channel 288C2.

9. SBSF has stated its willingness to reimburse the licensee of Station WAVK(FM), Marathon, Florida, and the permittee of Station WKKB(FM), Key Colony Beach, Florida, for the reasonable cost associated with the change in channels. However, since the licensee of Station WAVK(FM) at Marathon sought and will receive an upgrade, no reimbursement for expenses will be required for the channel change at Marathon.

TECHNICAL SUMMARY

10. Channel 288C2 can be allotted to Marathon in compliance with the minimum distance separation requirements of the Commission's Rules at the licensed site of Station WAVK(FM), at coordinates 24-43-44 and 81-02-05. Channel 280C2 can be allotted to Key Colony Beach in compliance with the minimum distance separation requirements of the Commission's Rules at the construction permit site for Station WKKB(FM), at coordinates 24-42-25 and 81-06-17. Channel 292C2 can be allotted to Key Largo in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 20.3 kilometers (12.6 miles) southwest of the community, at coordinates 24-57-20 and 80-34-50.

11. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective , 1994, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Key Colony Beach, Florida	280C2
Key Largo, Florida	292C2
Marathon, Florida	232C2, 249A 288C2

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WZMQ(FM), Key Largo, Florida, IS MODIFIED, to specify operation on Channel 292C2 in lieu of Channel 280C2, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the station authorization except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the station authorization except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WAVK(FM), Marathon, Florida, IS MODIFIED, to specify operation on Channel 288C2 in lieu of Channel 292A, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

14. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station WKKB(FM), Key Colony Beach, Florida, IS MODIFIED, to specify operation on Channel 280C2 in lieu of Channel 288C2, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the station authorization except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with the station authorization except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

15. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Key Chain, Inc., licensee of Station WAVK(FM), Marathon, Florida, is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

16. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Richard L. Silva
35 Sombrero Blvd
Marathon, FL 33050
(Permittee for
Station WKKB(FM))

Key Chain, Inc.
5500 W. W. 98th Paris
Miami, FL 33156
(Licensee for
Station WAVK(FM))

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Washington, D.C. 20036
(Attorneys for Joint Petitioners)

17. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

18. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau